



BEAR VALLEY COMMUNITY SERVICES DISTRICT

OUTSIDE DISTRICT LEGAL COUNSEL

Release Date: May 15, 2026

Proposal Due Date: June 12, 2026, 4:00 p.m.

Proposal Contact:

Beverli A. Marshall
General Manager
Bear Valley Community Services District
28999 S. Lower Valley Road
Tehachapi, CA 93561

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REQUEST FOR PROPOSAL
OUTSIDE DISTRICT LEGAL COUNSEL

1. KEY DATES

A. Questions and suggestions

Questions must be submitted in writing no later than 4:00 p.m. Friday, May 29, 2026. They should be emailed to bmarshall@bvcsd.org.

B. Filing Deadline

Proposals must be received no later than **June 12, 2026, 4:00 p.m. Pacific Time.**

2. BACKGROUND

The Bear Valley Community Services District, (“BVCS D”) is a multi-service special district covering a 38.94 square mile gated community that serves approximately 6,000 residents. It is in Kern County about 60 miles east of Bakersfield in the Tehachapi Mountains and was founded in 1970 by the Kern County Board of Supervisors and operates under the Government Code governing special districts (GC Section 61000 et. seq.).

BVCS D is governed by a five-member Board of Directors. The Board appoints and retains the District’s outside legal counsel and the General Manager, who is responsible for the operations of the District. The District’s responsibilities involve complex regulatory, environmental, and intergovernmental considerations within Bear Valley Springs.

The District provides a variety of services like a city, which include law enforcement (sworn police officers), parks and recreation, potable water, road maintenance and snow plowing, storm drainage, wastewater treatment, and solid waste disposal. In addition, like other gated communities, it provides entrance gate services. It has an annual operating budget of approximately \$11 million, which includes \$75,000 for general legal services.

3. SCOPE OF SERVICES

The District seeks outside Legal Counsel capable of providing comprehensive, timely, and practical legal advice tailored to the needs of a California special district that provides services like a city. Services include, but are not limited to, the following:

A. General Counsel Services

1. Provide legal advice and consultation (oral and written) to the Board of Directors and General Manager.

2. Attend regular and special Board meetings, including open and closed sessions, workshops, and other meetings as requested. (The District will consider remote participation.)
 3. Advise on compliance with applicable laws, including but not limited to:
 - a. Ralph M. Brown Act
 - b. California Public Records Act
 - c. Political Reform Act and conflict-of-interest laws
 - d. California Environmental Quality Act (CEQA)
 - e. Proposition 218 and related rate-setting requirements
 - f. California Water Code and special district law
 4. Draft, review, and revise resolutions, ordinances, policies, contracts, memoranda of understanding (MOUs), agreements, staff reports, notices, and other District documents.
 5. Provide guidance on governance, ethics, elections, and Board procedure.
 6. Advise on relevant state and federal legislation, regulations, and case law affecting the District.
- B. Specialized and Support Services
1. Advise on Proposition 218 rate setting, special parcel taxes, and other funding mechanisms.
 2. Advise on public contracting, construction law, procurement, and claims.
 3. Provide legal support on labor and employment matters, excluding matters assigned to separate labor counsel, if applicable.
 4. Represent the District in litigation, administrative proceedings, and negotiations, or coordinate and oversee special counsel when appropriate.
 5. Provide risk management and claims support, including insurance-related matters.
 6. Assist with legal compliance related to grants, environmental permitting, and regulatory agencies.

4. **Minimum Qualifications**

Firms must meet the following minimum qualifications.

- Be licensed to practice law in the State of California and be members in good standing with the State Bar of California

- Demonstrate significant experience (minimum 7–10 years preferred) providing general legal counsel services to California public agencies, preferably water districts or other special districts
- Demonstrate experience in public agency law, water law, CEQA, Brown Act, Public Records Act, public contracting, and special district governance
- Demonstrate the ability to provide timely responses and maintain reasonable availability to the Board and General Manager
- Demonstrate the ability to work effectively with the Board and General Manager

5. PROPOSAL FORMAT AND CONTENT

Proposals shall be clear, concise, and well-organized and shall not exceed 15-20 pages, excluding resumes and appendices.

A. Required Contents

1. Cover Letter / Executive Summary
 - a. Firm name, address, and primary contact
 - b. Overview of qualifications and proposed approach
 - c. Identification of the proposed General Counsel
2. Firm Qualifications and Experience
 - a. Description of the firm and areas of practice
 - b. Experience representing California water districts and special districts
 - c. Relevant representative matters
3. Key Personnel
 - a. Identification of the primary attorney and backup attorneys
 - b. Resumes and State Bar numbers
 - c. Office location(s) and accessibility
4. Approach and Service Deliver
 - a. Approach to providing general counsel services
 - b. Communication style and responsiveness
 - c. Availability and succession/continuity planning
 - d. Approach to coordinating and overseeing special counsel
5. Conflicts of Interest and Disclosures
 - a. Identification of any actual or potential conflicts of interest
 - b. Description of how conflicts would be avoided or mitigated
 - c. Disclosure of any malpractice claims, State Bar discipline, or pending investigations Fee Structure and Billing

6. Fee Structure and Billing
 - a. Proposed billing structure (hourly, retainer, or hybrid)
 - b. Hourly rates by position
 - c. Billing practices with minimum billing increments, travel charges, and reimbursable expenses
7. References
 - a. At least three public-agency client references, preferably special districts

6. NEGOTIATION

A. Compensation:

The District anticipates compensating outside Legal Counsel on an **hourly basis**, with additional services billed as agreed. The District reserves the right to negotiate any terms and conditions of the proposals received, with the final candidate prior to acceptance/rejection of said proposals. The negotiations will be conducted in accordance with Bear Valley Community Services District policies and procedures.

B. Insurance and Indemnification

The selected firm will be required to provide insurance consistent with the District standard requirements, including:

- Commercial General Liability
- Professional Liability (Errors and Omissions)
- Workers' Compensation, as applicable

The selected firm shall agree to indemnify, defend, and hold harmless the District, its Board members, officers, employees, and agents as required under the final professional services agreement.

C. Term of Agreement

The District anticipates entering into a professional services agreement for a three-year term, with options for two one-year extensions at the District's discretion. Either party may terminate the agreement upon written notice, as specified in the final contract.

7. EVALUATION/SELECTION OF CONSULTANT

A. Proposer Qualifications

Proposers will be evaluated based on the following criteria.

- Qualifications and experience with public agencies and special districts
- Understanding of the District's legal needs

- Experience and qualifications of proposed personnel
- Fee structure and overall value
- Responsiveness and availability
- References

B. Review of Proposals

The District may conduct interviews with shortlisted firms. **Final selection will be made by the Board of Directors.**

C. Evaluation Scoring

Proposals will be numerically scored and ranked using the criteria and weighting described in this section. The scores assigned will reflect the extent to which criteria are fulfilled relative to other proposals. The evaluation criteria and maximum score that can be achieved for each criterion are presented as follows:

<i>Evaluation Criteria and Maximum Evaluation Score</i>	
<i>Criteria</i>	<i>Maximum Evaluation Score</i>
Qualifications and experience with public agencies and special districts	20
Understanding of District's legal needs	20
Experience and qualifications of proposed personnel	25
Fee structure and overall value	15
Responsiveness and availability	10
References	10
Total Maximum Score	100

D. The District reserves the right to act in the best interest of the District and its residents and businesses, including the right to reject a proposal that is given the highest quantitative scoring in the evaluation process if the proposal is not in the best interest of its residents and businesses.

8. INSTRUCTIONS AND CONDITIONS

A. Submittals

Only electronic submittals will be accepted via email to: bmarshall@bvcsd.org. Proposals shall be submitted in PDF format with the subject header as: "Proposal – Outside District Legal Counsel Services". Submittals must be received no later than **June 12, 2026, 4:00 p.m. Pacific Time.**

B. Late Submittals

Proposals received after the filing deadline may not be considered.

- C. Proposals shall be received as set forth in this RFP. The opening of any proposal shall NOT be considered as acceptance of the proposal as a responsive proposal. Attention of proposers is especially directed to the Scope of Work which, in addition to the proposal and these instructions, are the basis for evaluation and will be part of any agreement with the successful proposer. Any deviations from the specifications in this RFP shall be a proper reason for rejection of all or any part of the proposal.
- D. The District reserves the right to reject or accept any or all submittals or parts thereof, and to accept or reject the alternatives individually or jointly, for any reason. The District reserves the right to consider any minor deviations from the specifications in this RFP and determine the acceptance or rejection of such deviation. The District reserves the right to seek supplementary information from any proposer at any time after submittal and before the award. Such information will be limited to clarification or amplification of information asked for in the original proposal.
- E. The District recognizes its policy of providing equal opportunity to all qualified persons and hereby notifies all proposers that it encourages all proposers to take active race/gender- neutral steps to include Disadvantaged Business Enterprises in this and other District agreements. Disadvantaged Business Enterprises will be afforded full opportunity to submit in response to this invitation. Proposers will not be discriminated against on the grounds of race, color, religious creed, sex or national origin in consideration for award.
- F. The District reserves the right to modify this RFP at any time. In the event it becomes necessary to modify or revise the RFP, a written amendment or addenda issued by District is the only method which should be relied on with respect to changes to the RFP. Proposer is responsible for contacting the District prior to submitting a proposal to determine if any amendments were made to the RFP. Documents, amendments, addenda, etc. will be posted to the District website at www.bvcasd.org.
- G. Proposals will be evaluated by the District. If a proposal is found to be incomplete or not in compliance with the format required, it will not be submitted for evaluation. During the evaluation process, the District may find it beneficial to request additional information.
- H. Any proposal may be withdrawn at any time prior to the time fixed for the opening, provided that a request in writing executed by the proposer or his/her duly authorized representative, for the withdrawal of such proposal is filed with the District. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal prior to the time and date set for the opening. After the expiration of the time and date for receipt of proposals, a proposal may not be withdrawn or altered.

- I. Issuance of the RFP and receipt of proposals does not commit the District to award an agreement. The District reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with other than the selected company should negotiations with the selected company be terminated, or to cancel any section of this RFP. The District also reserves the right to apportion the award among more than one proposer.
- J. An award under this RFP will not be based solely on the lowest price. If an award is made, it will go to the proposer(s) with the best overall submittal. The successful submittal will be competitively priced and provide adequate service to meet the District's needs. An award will be made as soon as possible after the completion of the evaluation process. Proposals shall remain valid for at least 90 days after the filing deadline.
- K. Proposer's Proprietary information: All documents provided by the successful proposer shall become public record. The successful proposer shall enter into a formal Agreement with District which will be very similar in content to the Draft Professional Services Agreement which is provided for information purposes only and to help clarify District intent relevant to this RFP. Proposer shall include a statement in the Response to this RFP that they accept the terms.

ATTACHMENT A

THE BEAR VALLEY COMMUNITY SERVICES DISTRICT AND _____

THIS AGREEMENT for professional services is made by and between the Bear Valley Community Services District, a California Special District ("District"), and _____, a _____ ("Professional") as of _____, 20XX.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the District's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.
- 1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.
- 1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. COMPENSATION. District hereby agrees to pay Professional a sum not

to exceed [REDACTED], notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Professional's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. District shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to District in the manner specified herein. Except as specifically authorized by District, Professional shall not bill District for duplicate services performed by more than one person.

Professional and District acknowledge and agree that compensation paid by District to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder, as well as a separate notice when the total number of hours of work by Professional and any individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Professional's signature.

2.2 Monthly Payment. District shall make monthly payments, based on

Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to District of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the District.

Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to District. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract

Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Professional shall notify District within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the District upon written verification that Professional does not have any employees.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. District and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the District and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District. Professional shall notify District within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended,

voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

4.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The District shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish District with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for

subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to District at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies District may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Professional's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

- 5.1 General Requirement.** Professional shall indemnify, defend with counsel selected by the District, and hold harmless the District and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 PERS Indemnification.** In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of District, Professional shall indemnify, defend, and hold harmless District for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District, and any attorneys' fees and

costs incurred by the District to enforce this Section.

- 5.3 Design Professionals.** To the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify under Sections 5.1 and 5.2 shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 6. STATUS OF PROFESSIONAL.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of District. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. District shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise District shall not have the right to control the means and methods by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the District in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the District. The District shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in PERS as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee, agent or subcontractor to become eligible for a claim for PERS benefits.

- 6.2 Professional Not an Agent.** Except as District may specify in writing, Professional shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Professional represents and warrants to District that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to District that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from District during the term of this Agreement.
- 7.5 Nondiscrimination and Equal Opportunity.** Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.

Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Professional.

Professional may cancel this Agreement upon [REDACTED] days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Professional delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the District in connection with this Agreement.

- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if District grants such an extension, District shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** District and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and

Professional shall survive the termination of this Agreement.

8.6 Options upon Breach by Professional. If Professional materially breaches any of the terms of this Agreement, District's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;

8.6.3 Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or

8.6.4 Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Professional pursuant to Section 2 if Professional had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Professional's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Professional hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Professional agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Professional's Books and Records. Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that

Section 9.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Kern or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Professional may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California

Government Code Section 81000 *et seq.*

Professional shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the District. If Professional was an employee, agent, appointee, or official of the District in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the District for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

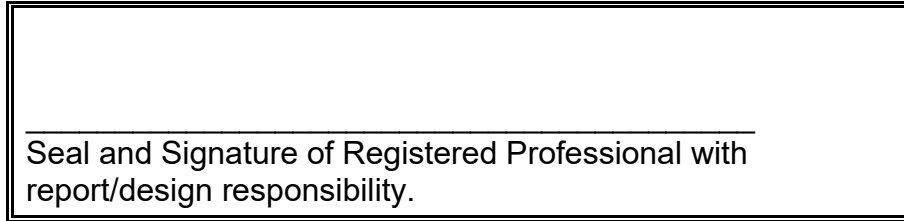
10.10 Notices. Any written notice to Professional shall be sent to:

Email Address (for Insurance Update Requests)

Any written notice to District shall be sent to:

10.11 Professional Seal. Where applicable in the determination of the Contract Administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings

shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the compensation schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between District and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 IRS Form W-9. Professional shall complete and submit Internal Revenue Service Form W-9 to the District before execution of this Agreement. The District's Finance Director shall have authority to waive this requirement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

Bear Valley Community Services District

Professional

Beverli A. Marshall, General Manager

[NAME, TITLE]

Date: _____

Date: _____

Attest

Approved as to Form

Denise Jelleschitz, District Clerk

Palmer Hilton, General Counsel

Date: _____

Date: _____